

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 993 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAM ANADH SON OF SHIVA DHARSING KARADIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR KT DAVE, AGP, for the respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed on August 28, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by Commissioner of Police, Rajkot City, Rajkot.

2. The detaining authority has passed the order considering four offences registered against the detenu for the offence of theft. The authority considered less drastic remedies and in doing so, also considered possibility of resorting to proceedings under Section 57 of the Bombay Police Act, but came to conclusion that it is not possible to resort to such remedies as the petitioner is required to be immediately prevented from pursuing his activities of a dangerous person.

3. Ms. Patel, learned advocate appearing for the petitioner, submitted that the detaining authority has considered possibility of resorting to proceedings under Section 57 of the Bombay Police Act, whereas, in fact, that is an irrelevant factor for the reason that all the cases registered against the detenu are pending investigation. That Section 57 can be resorted to only if there is/are conviction under the provisions of the statutes stated in Section 57 of the Bombay Police Act. She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. A plain reading of the grounds of detention indicates that the detaining authority has considered four offences registered against the detenu for the offences of theft. They are all pending investigation. The detaining authority has considered the possibility of resorting to Section 57 of the Bombay Police Act by way of less drastic remedy. As rightly pointed out by Ms. Patel, consideration of Section 57 becomes irrelevant for the reason that only if there is/are convictions, there is a possibility of resorting to Section 57 and, therefore, the order is based on irrelevant material.

5. Apart from this, the grounds of detention also indicate non-application of mind on part of the detaining authority. The detenu has been branded as a 'dangerous person' and, therefore, even if Section 57 is considered, Section 57(a) would be applicable and if that is considered, conviction under Chapter XII, XVI and XVII is sufficient to attract the provisions, whereas the authority has said that two convictions are required for resorting to Section 57 of the Bombay Police Act. This reflects non-application on part of the detaining authority since it has considered a wrong provision. In this view of the matter, the petition deserves to be allowed on this count alone, as the order is passed on extraneous material, without application of mind, which would vitiate the order and, therefore, the petition is

allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 28, 1999 passed against the detenu is hereby quashed. The detenu-Ram Avadh, son of Shiv Dharsing Karadiya is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A. L. DAVE, J.]

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